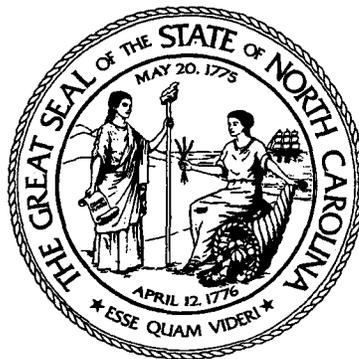


LEGISLATIVE RESEARCH COMMISSION

STATE TORT LIABILITY AND IMMUNITY



REPORT TO THE
2000 SESSION OF THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

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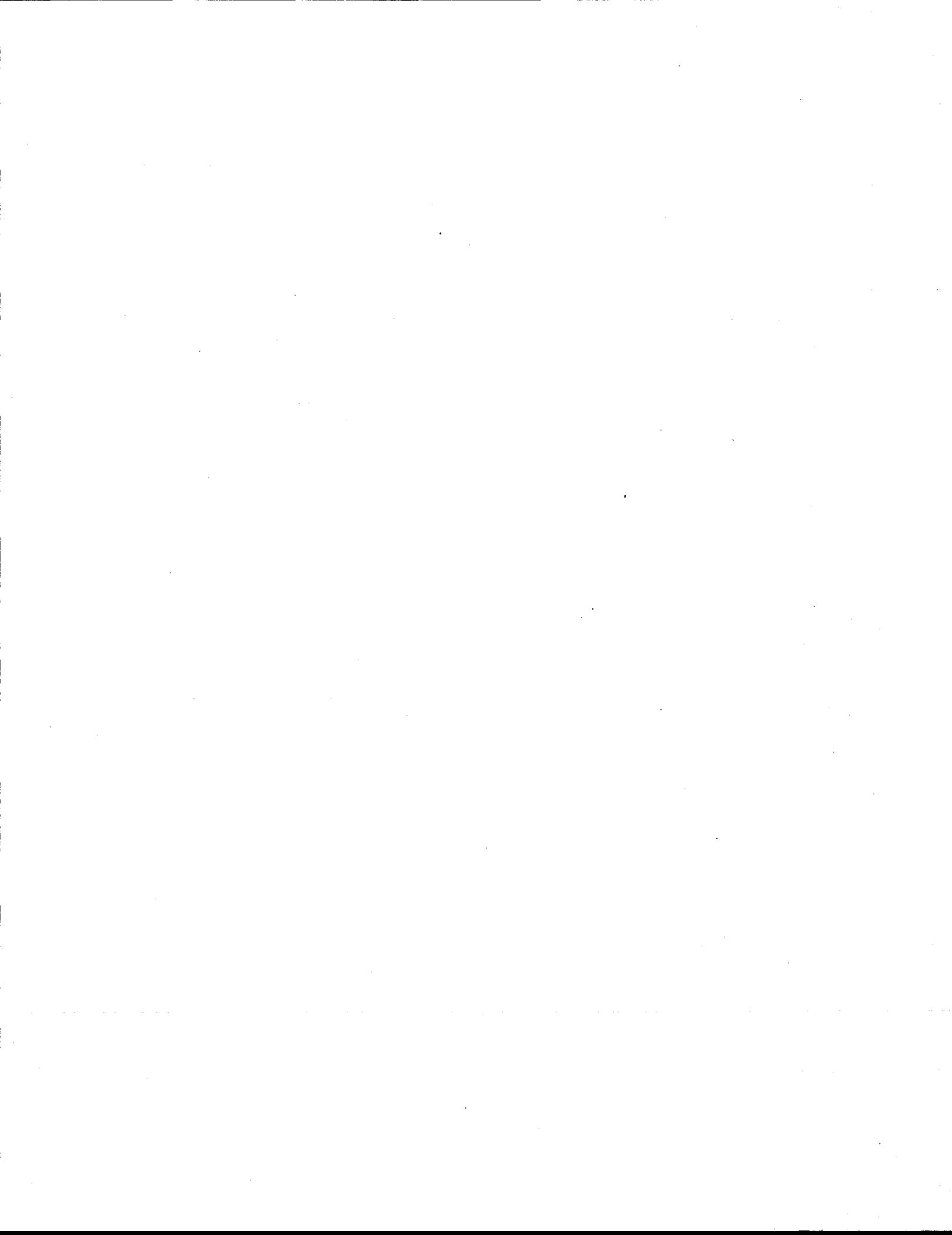
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601



May 4, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY (REGULAR SESSION 2000):

The Legislative Research Commission herewith submits to you for your consideration its 2000 interim report on state tort liability and immunity issues. The report was prepared by the Legislative Research Commission's Committee on State Tort Liability and Immunity, pursuant to G.S. 120-30.17(1).

Respectfully submitted,

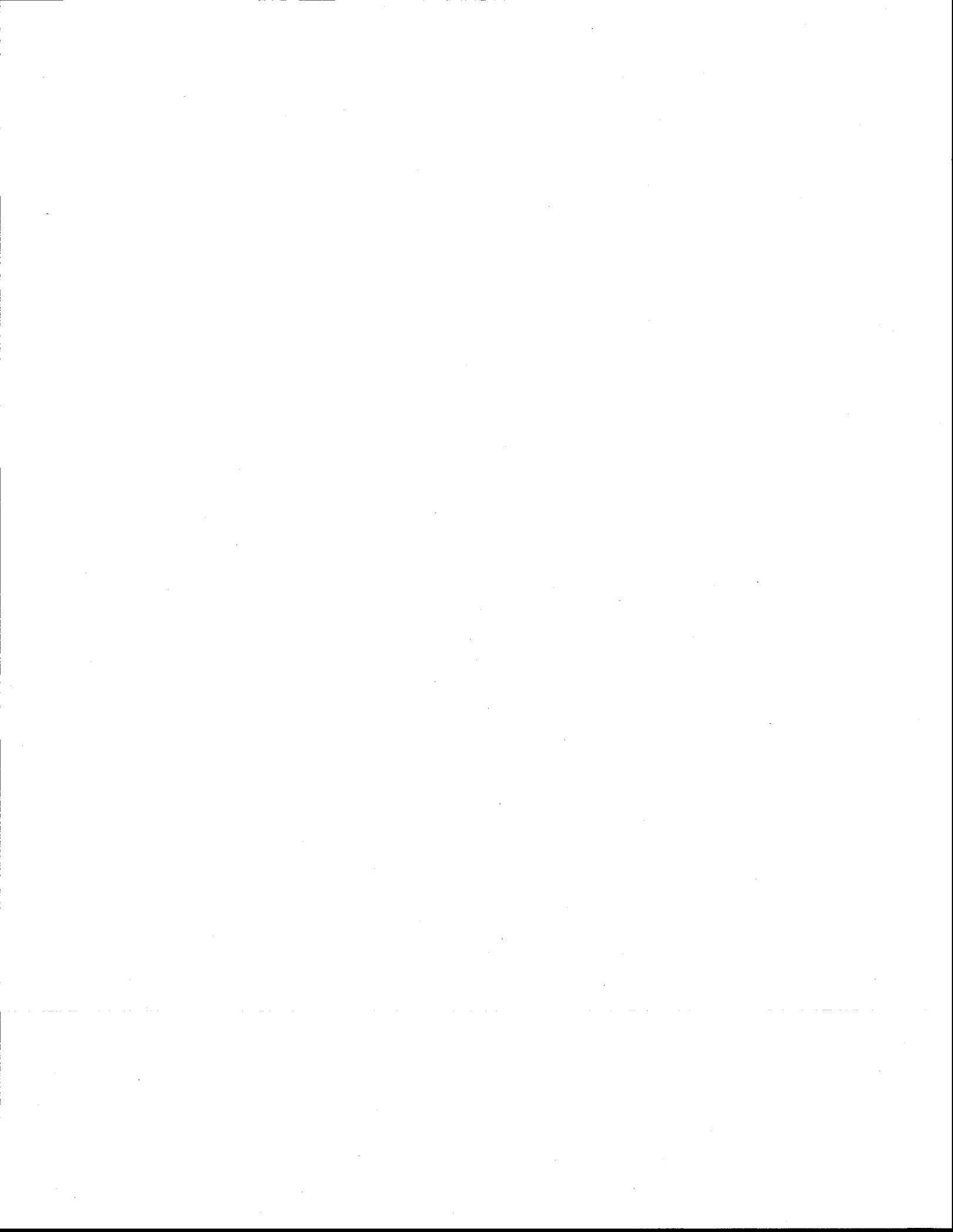
James B. Black

James B. Black
Speaker of the House

Marc Basnight

Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission



1999 - 2000

LEGISLATIVE RESEARCH COMMISSION

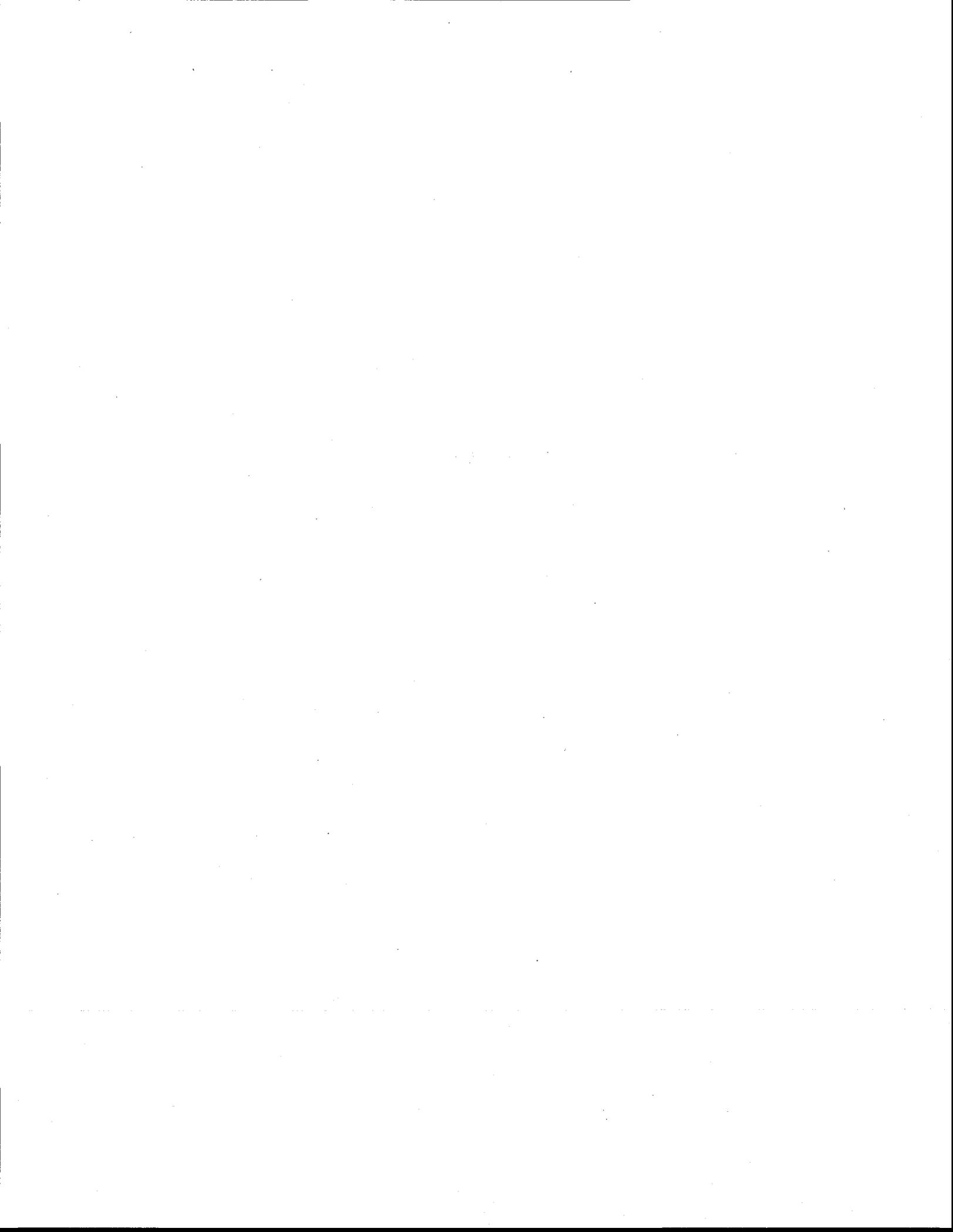
MEMBERSHIP

President Pro Tempore of
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Marc Basnight, Cochair

Senator Austin M. Allran
Senator Linda D. Garrou
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Senator Ed N. Warren

Speaker of the House
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Rep. Steve W. Wood



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general-purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1998 Session and 1999 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of state tort liability and immunity was authorized by Section 2.1 of Part II of Chapter 395 of the 1999 Session Laws (Regular Session, 1999). The relevant portions of Chapter 395 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Governmental Agency and Personnel Issues area under the direction of Representative James W. Crawford, Jr. The Committee was chaired by Senator Brad Miller and Representative Martin Nesbitt. The full membership of the Committee is listed in Appendix B of this report. A committee notebook

containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

First Meeting — February 2, 2000

At its organizational meeting on February 2, 2000, the Committee was provided with background information regarding the origin of the Committee. Mrs. Kellie Crabtree and her two-year-old daughter were grievously injured when their van was hit by a State DOT truck in 1998. The injuries were extensive and their medical expenses exceeded the State tort claims limit of \$150,000 prompting Senator Carpenter and Representative Walend to introduce a bill in the 1999 Session to increase the State's liability for negligence. When action on the bill stalled, the issue was referred to the Legislative Research Commission, which authorized this Committee for further study.

After this brief introduction, O. Walker Reagan, Co-counsel for the Committee, provided an explanation and overview of the legal concepts associated with state tort liability law including sovereign immunity, the public duty doctrine, and the duty to defend state employees. First, Mr. Reagan explained that the State waived its immunity in 1951 with the passage of the "Tort Claims Act" which allows an injured person to recover damages from the State subject to the same defenses that might be available to a private individual, such as contributory negligence. Under this Act, recovery is limited to a maximum of \$150,000 of damages per individual. The Attorney General's Office defends these claims on behalf of the State and has the authority to settle claims. If the claims are not settled, they are adjudicated by the Industrial Commission rather than in district or superior court, and appeals are heard by the Court of Appeals. Claims awarded to an injured person are paid by the agency for which the employee works, without direct appropriation.

Mr. Reagan also explained that a person injured by a State employee might also sue the employee personally. Under the "Duty to Defend State Employees Act," the State can elect to defend an employee who commits a negligent act in the course and scope of his employment with the State. If the injured person is successful against the individual employee, the State pays the claim up to \$150,000. In addition, the State purchases an excess liability policy, which covers certain types of negligent acts. If the \$150,000 cap were exceeded, this insurance policy would go into effect. However, automobile liability is excluded under the excess liability coverage. If there is a claim in excess of the Tort Claims Act or the excess liability policy, then the state employee will be personally liable for that claim. Mr. Reagan clarified that despite the excess liability coverage and the duty to defend statute, an injured person can never receive more than \$150,000 from the State for one claim. Following this presentation, there was a discussion about several of the issues raised such as excess liability coverage, the exclusion of auto liability claims from excess coverage, and immunity at the local level.

Next, the Committee heard from Mrs. Kellie Crabtree who recounted the accident that occurred on November 12, 1998 when the family's minivan was struck on the driver's side by a NC DOT dump truck pulling a steamroller. Mrs. Crabtree detailed the injuries sustained by her daughter, McKenzie, including a broken collarbone, a break in her femur, and severe damage to the growth plate in her left leg. Mrs. Crabtree also told

of her own injuries which included a broken arm, broken thumb, deflated left lung, broken ribs, crushed left hip and broken right hip, broken pelvis, and crushed left femur. A two-inch segment of her femur had to be removed and was replaced with a steel plate. Mrs. Crabtree said she now has a rod from her left hip to her knee and her hips are wired together with screws and wire. Her right knee was crushed and had to be removed. The bones below her left knee were broken and a steel rod has been inserted from her knee to her ankle. Mrs. Crabtree estimated that her medical expenses might total \$500,000. She was unable to estimate McKenzie's expenses because the child is still being tested and will need further surgery. Mrs. Crabtree explained that while she was covered on her husband's insurance policy, the policy has limits and does not cover home-care, which she estimates at approximately \$80,000.

Mrs. Crabtree's attorney, Mr. John M. McCabe, addressed the committee and confirmed the estimate of the medical bills and noted that the figure did not include compensation for lost wages. Mr. McCabe also pointed out that Mr. Crabtree's health insurance provider has subrogation rights to any recovery received by Mrs. Crabtree for medical expenses.

Next, the Committee heard from Dascheil Propes, Chief Deputy Commissioner with the NC Department of Insurance. He stated that the Department of Insurance's role in these matters is to arrange coverage and to manage the financing of that coverage. Mr. Propes provided the Committee with statistics about the number of claims that DOI handles per year and estimated the cost to the State if the cap were increased. He stated that while DOI handles about 1500-2000 claims per year, there are only about two to three claims per year that reach the \$150,000 limit. Mr. Propes also provided the Committee with information about sovereign immunity in other states. Citing a recent survey, he stated that there were 6 states that have total sovereign immunity and 8 states that have caps less than North Carolina. Mr. Propes also explained that the excess coverage only comes into play when there are multiple claimants. Recovery is still limited to \$150,000 per person; a claimant cannot recover from the individual employee or his insurance company above that limit.

There was discussion regarding safety initiatives by the State. The Committee members wanted to know the types of safety programs the State has, if any, how they compare with the private sector, and what more can be done to improve safety. Mr. Propes added that the State should be implementing more safety initiatives similar to those found in the private sector and that it is the goal of the Department of Insurance to make that happen.

Next, Richard Taylor, Director of the Academy of Trial Lawyers, addressed the Committee raising three issues for its consideration: (1) abrogating sovereign immunity or increasing the cap consistent with the national trend, (2) looking into the immunity at the local government level, and (3) examining the current status of the "public duty doctrine" which precludes liability if an employee of the State or local government injures someone while that employee or agent is engaged in performing his duties to the public.

The first meeting concluded with the Co-chairs: (1) directing staff to prepare a chart summarizing the different areas of governmental liability, (2) requesting the Department of Insurance to bring a concrete proposal to the next meeting for raising the limit, and (3) announcing that the Committee would hear from the Attorney General's Office at the next meeting.

Second Meeting — March 9, 2000

The second meeting began with a discussion of an article that appeared in the *Asheville Citizen-Times* regarding Mrs. Crabtree's accident and the legislative efforts to raise the state tort liability limits. Co-chair Representative Nesbitt addressed the Committee regarding the article stating he was disappointed that the Committee was portrayed as only being concerned with the cost to the State. He said that he did not get that impression from the first meeting and felt the article contained some misinformation.

Then, the Committee heard from Mr. Fisher, Mrs. Crabtree's father, who presented petitions signed by members of his community supporting the passage of the bill raising the state tort claim liability limit. He spoke briefly about how much his daughter and her family has suffered as a result of the accident.

After considering all of the issues presented at the first meeting, the Chairs recommended that the only issue the Committee could realistically address before the Short Session is raising the cap in the Tort Claims Act. The Committee decided that the other issues raised at the first meeting could be considered after the Short Session and reported to the 2001 Session.

Next, the Committee heard from Mr. Reagan who responded to research requests from the first meeting. Using a flowchart for illustration, Mr. Reagan explained the different types of liability for negligent acts by State and local governments and the duty to defend law. He explained that currently an injured person can sue either the State or the negligent employee and collect up to \$150,000, but the injured person cannot collect \$150,000 from both parties. Mr. Reagan then explained who pays for these claims and how the awards are funded. The agency where the employee who committed the negligent act was employed is responsible for paying the claim from their budget. Mr. Reagan also pointed out that there are distinctions among automobile claims, non-automobile claims, and school bus claims. Specifically, the Department of Public Instruction has a specific line-item appropriation in its budget for payment of school vehicle claims whereas other agencies do not have a specific appropriation for tort claims (but tort claims are taken into consideration when making their budget). Mr. Reagan explained the difference between minimum insurance requirement required for private commercial vehicles, which is \$750,000, as compared to the maximum amount of recovery an individual can receive under the Tort Claims Act, which is \$150,000. Mr. Reagan also distributed information regarding the state tort claim limits in other states.

Next, the Committee heard from Dascheil Propes, Chief Deputy Commissioner with the NC Department of Insurance, who responded to questions about the number of overall claims in the last twelve months that exceed \$150,000. Mr. Propes said that

normally there are no more than six. There was further discussion about how the State's incident rate claims compared with the private sector, and Mr. Propes said that the number of claims against the State has decreased over the last ten years.

The next speaker was Harry Bunting, Special Deputy Attorney General, Tort Claims Section, who discussed the State's liability for out-of-state torts. The general rule is that the State is immune from liability for negligence that occurs in other states involving North Carolina State employees or property. There are exceptions such as a waiver by statute or by agreement. A State employee, however, may be sued in another State because there is no immunity. Thus, the State provides excess liability coverage for these instances in accordance with the duty to defend statute. Mr. Bunting also explained that the cap of \$150,000 applies to all categories of negligence by the State—auto claims, property damage claims, and non-auto claims. The Committee asked Mr. Bunting for the Attorney General's position on the proposed increase of the cap. Mr. Bunting indicated that the Attorney General's Office has no policy or official position on raising the tort claims limit, but that he personally feels it should be raised. He did say, however, that he had concerns about the small agencies' ability to pay for the increased claims. Hampton Dellinger from the Attorney General's Office added that the Attorney General was not opposed to raising the tort cap limit.

There was a brief discussion about alternatives to raising the limit such as using a formula like the one used to determine Worker's Compensation benefits or having different caps for different damages. For example, the Committee noted that several states have a cap for noneconomic damages but no cap for medical care and lost earnings. There was also discussion about special emoluments and the constitutionality of special legislation to appropriate money to an individual. Susan Iddings from Legislative Bill Drafting Division addressed this issue by stating that a bill appropriating money as settlement of a legitimate claim against the State where there were actual injuries would be perceived as an appropriation for a public purpose. She said there is precedent for this and can be seriously considered by the Committee. The Committee dismissed the idea of enacting legislation for compensation on an individual, case-by-case basis like Georgia does for several reasons including the fact it would seem like charity when the individual has a right to recovery.

Next, Mr. Propes presented options for funding an increase of the tort cap. He said the State already has a NC Auto Retrospective Adjustment Fund that exists for collection of premiums to pay to Travelers who handles the auto claims. The State could also have two other funds, one for auto and one for non-auto, that could be funded by appropriation. Each State agency would continue to pay its claims up to the cap and anything over that would come out of this fund. Mr. Propes indicated that purchasing private insurance would be more expensive than having self-funded insurance because insurance companies intend to make a profit. The Department of Insurance wants the State to continue paying its own claims, just as it does now, because it is less expensive than purchasing insurance. In addition, the excess liability coverage protects the State for claims over \$250,000 arising from one occurrence because the money comes from the insurance company, not the State.

Following Mr. Propes' presentation, there was discussion about how the proposed excess liability fund should be funded and where it should be housed. Mr. Bunting did not think it would be practical to put it in the Attorney General's Office. Mr. Propes suggested the fund be housed in the Budget Office. There was also a discussion about whether the fund should be reverting or non-reverting. If the fund is non-reverting, additional appropriations may not be needed every year depending on the incidence of accidents or could be adjusted accordingly.

Next, there was a discussion of whether additional safety programs might help reduce the incidence of claims. Mr. Propes believes a safety program could make as much as a 10% difference in savings or approximately \$50,000 per year. While he believes that a safety program can have a positive impact on those severe cases like the Crabtree's, he said the Department's safety program will more than likely have an impact on smaller claims in the \$10,000 to \$50,000 range. When asked about funding for these safety programs, Mr. Propes informed the committee that currently there was no appropriation for safety programs but that the Department receives a sufficient amount of grant money for that purpose. He added that money is not the primary issue, but rather the departments' willingness to implement screening, training and education programs relating to safety issues.

The Committee then identified the following issues to focus on:

- Should the State tort claims cap be raised and, if so, to what level?
- If the cap is raised, how should the increased cost be funded?

The members discussed several options for bill drafts:

- a bill raising the cap to \$500,000
- a bill with no limitations on medical expenses and a cap of \$500,000 for all other damages
- a bill with a \$100,000 limit for property damage, \$150,000 for medical expenses, \$150,000 for other damages, and \$250,000 for wrongful death.

The Committee's proposals reflected a concern about the rights of insurance companies to recover under subrogation that could effectively prevent an injured person from receiving any compensation. Staff was asked to research the extent that subrogation could be limited by statute. The Committee also proposed that the bill drafts have an effective date, which would make the increased limit applicable to pending claims.

The meeting concluded with staff being instructed to prepare one or more bills based on the suggestions of the Committee members to be taken up at the next meeting. The Chairs also recommended that the Commission continue after the Short Session to study several of the other issues raised over the course of its three meetings with an interim report presented to the Commission this year.

Third Meeting — March 28, 2000

The third meeting began with a presentation by Elisa Wolper, an analyst from the Fiscal Research Division, who discussed the impact of raising tort claims limit to

\$500,000. Ms. Wolper emphasized the difficulty of estimating the potential increase in cost to the State since it is impossible to predict the occurrence of accidents. Nevertheless, Ms. Wolper used three different methods to arrive at an estimated cost. In the first method, she guesstimated the frequency and size of future claims based on past claims and arrived at an average yearly increase of \$2,066,666. In the second method, she assumed that the average claim would go up 16-32% as the limit is raised and arrived at an average yearly increase of \$1,619,000. In the third method, she relied on the actuarial estimates of Travelers Insurance in administering the Retrospective Rating Plan for auto liability. The results of the three methodologies were averaged together for a total increase of \$2.64 million. The Committee is anticipating that an annual contribution will need to be made to this fund by appropriation from the General Assembly. The amount may vary from year to year depending upon the number of claims.

Next, the Committee considered a bill draft which raised the tort claim limit to \$500,000 for all claims against the State including auto claims, school bus claims, and claims under the Duty to Defend State Employees. Mr. Reagan explained the bill to the Committee highlighting the key provisions:

- The bill raises the tort claim limit to \$500,000 for all damages arising out of a single occurrence.
- The bill establishes the "State Excess Liability Fund." The first \$150,000 of a claim under this Act would be paid by the unit of State government by which the employee is employed. Any claims in excess of \$150,000 would be paid from the State Excess Liability Fund, which is a non-reverting fund with its earnings credited to the assets of the fund. The Fund would be housed in the Office of State Budget and Management. Payments out of this Fund would be as authorized by the Attorney General for payment of settlements or judgments in these actions.
- The bill raises the amount for which the State can bring a counterclaim under this Act to \$500,000. The Committee had some questions about this provision and suggested that it might look into this issue further as it continues to meet after the Short Session.
- The bill amends related statutes, such as the Duty to Defend Public School Employees, so that there is a uniform cap of \$500,000 for all claims brought against agents of the State.
- The Duty to Defend Public School Employees has a specific provision that prohibits the payment of punitive damages. Although punitive damages may not be awarded under the Tort Claims Act, punitive damages may be awarded against a State employee who is sued in civil court. This provision says that the State is not going to insure or defend its employees for intentional acts; the employee would be liable for any punitive damages.
- The bill appropriates funding in the amount of \$2.64 million from the General Fund to the State Excess Liability Fund for fiscal year 2001.
- The effective date of the bill is July 1, 2000 and its provisions would apply to claims pending on or after that date.

Mr. Reagan concluded his presentation by recommending that the Committee further consider the funding mechanism as set out in this bill. Specifically, the Committee should consider whether all claims should be funded from the General Fund or whether some of the auto claims arising out of the Department of Transportation should be paid from the Highway Trust Fund.

Mr. Daschiel Propes, Chief Deputy Commissioner from the Department of Insurance, was asked to comment on the proposed bill. He said the only concern the Department has relates to the fact that all claims in excess of \$150,000 would be paid from the same fund. The Department's position is that claims should be tracked separately into three categories—auto, property and other torts. In response, the Committee recommended an annual report that divides claims into three categories and tracks what monies were paid and which agencies had claims, with copies going to the Department of Insurance, the Attorney General's Office, and the General Assembly.

At the second meeting, the Committee requested another bill draft that, to the extent possible, provides relief from subrogation claims by insurance companies in order to put more money into the pockets of injured claimants. Staff prepared a bill draft that increased the State tort claim limit and State liability under the duty to defend State employees to \$500,000, of which no more than \$200,000 could be awarded as damages for medical expenses. However, due to time limitations and the complexity of the issues relating to subrogation, the members elected not to include this version of the bill in their report.

The meeting concluded with remarks by Co-chair Representative Nesbitt that were directed to the Crabtree family who were present. He indicated that while the Committee supports the bill and sympathizes with the Crabtree's tragedy, the Committee could make no guarantees that the bill will pass during the Short Session. Finally, the Committee commended Mr. Crabtree's employer for waiving its subrogation rights in this case.

This meeting concluded with all members of the Committee agreeing that the bill draft raising the liability limit to \$500,000 should be finalized by staff and included in its final report.

Fourth Meeting – April 26, 2000

The final meeting of the Committee prior to the convening of the 2000 Session took place on April 26, 2000. During the meeting the Committee discussed and approved its interim report to be submitted to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

FINDINGS

The Legislative Research Commission State Tort Liability and Immunity Committee met three times, and the main focus of these meetings was the issue of whether or not to raise the State tort claim limit, and if so, how to fund the increase. There are other issues regarding state tort liability and immunity that were discussed but that the Committee members felt would require more time to study than the Committee had available and that these issues could be examined in greater detail after the 2000 Short Session.

The current State liability limit is \$150,000 per claim, and this limit applies to claims that fall under Article 31 State Tort Claims Act, Article 31A Duty to Defend State Employees, and Article 31B Defense of Public School Employees, all found in Chapter 143 of the General Statutes.

The Committee found that there are cases where a party injured by a State employee sustains damages in excess of this limit, and those parties are left with no other means of recovery. Although those cases are relatively rare, in some cases damages may equal or exceed \$500,000. The Committee found that increasing the State tort claim limit would allow more victims to recover to the same extent that they would if they had been injured by a private individual. The Committee also found that, since the State Tort Claims Act was enacted in 1951, the increases for the tort limits have not kept up with the Consumer Price Index, which is believed to have been even lower than the inflation in medical expenses paid by victims during the same year.

The Committee also found that, except for claims involving public school employees that are paid from direct legislative appropriations, all claims are paid out of the individual State agencies' budgets, often from lapsed salary money.

The Committee found that increasing the State tort claim limit could very well financially devastate some of the smaller State agencies if they are found to be responsible for larger claims. The Committee found that it would be better State policy for individual agencies to remain only responsible for the first \$150,000 of a claim, and that the amounts of any claims in excess of \$150,000 be paid from a central State liability fund, funded by direct appropriations. The Committee also found that there would be a need for an accounting mechanism for claims paid out of this central fund. By this accounting, information would be compiled on the types and amounts of claims being paid out and which agencies are generating the claims. This information would then be reported to interested parties each year.

In addition, the Committee found that there is a definite need for further study of the issues related to State and local government liability and how claims are handled, as well as the adoption and encouragement of safety programs for employees of State agencies.

RECOMMENDATIONS

RECOMMENDATION 1: That the General Assembly raise the State's liability for torts committed by its employees from \$150,000 per claim to \$500,000 per claim, by amending Articles 31, 31A and 31B of Chapter 143 of the General Statutes. (See LEGISLATIVE PROPOSAL I)

RECOMMENDATION 2: That the General Assembly create a State Excess Liability Fund as a nonreverting restricted reserve fund in the Office of Budget and Management for the funding of that portion of State tort liability claims in excess of \$150,000. (See LEGISLATIVE PROPOSAL I)

RECOMMENDATION 3: That any increases in the State liability under this legislative proposal apply to claims pending or filed on or after the increase becomes effective. (See LEGISLATIVE PROPOSAL I)

APPENDIX A

CHAPTER 395
1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

(1) Governmental Agency and Personnel Issues:

...j. State tort liability and immunity (Walend, Nesbitt)....

PART XXII.-----BILL AND RESOLUTIONS REFERENCES

Section 22.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

APPENDIX B

**MEMBERSHIP
STATE TORT LIABILITY AND IMMUNITY COMMITTEE (LRC)
1999-2001
S.L. 1999-395**

Pro Tem's Appointments

Sen. Brad Miller, Cochair
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Mr. Jerry Harris
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Mr. Eric Newman
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Frank Folger
Trina Griffin

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Rep. Trudi Walend
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Brevard, NC 28712
(828) 884-9314

Clerk
Jan Lee
(919) 733-5872

State Tort Liability and Immunity Study

History of Tort Claims Increases

Session Year	Chapter & Section	Amount
1949	c. 1138, s.1	\$ 6,000.00
1951	c. 1059, s.1	\$ 8,000.00
1955	c. 1102, s.1	\$ 10,000.00
1965	c. 256, s.1	\$ 12,000.00
1967	c. 1206, s.1	\$ 15,000.00
1971	c. 893, s.1	\$ 20,000.00
1973	c. 1225, s.1	\$ 30,000.00
1977	c. 529, s.2	\$100,000.00
1994	c. 777, s.5(a)	\$150,000.00

APPENDIX D

STATE	\$ Cap for damages from state ⁱ	County/municipal subdivisions liability ⁱⁱ	Insurance
Alabama	\$100,000	No immunity	Authorized for counties
Alaska	\$500,000 noneconomic, otherwise, no apparent limitation	No immunity	
Arizona	No limitation	No immunity	Mandatory for state
Arkansas	Limited Immunity ⁱⁱⁱ	Limited immunity	
California	No limitation ^{iv}	No limit	Authorized
Colorado	\$150,000	Same	Authorized
Connecticut	No limitation ^v	Same	Authorized
Delaware	\$300,000 plus any excess liability insurance	Same	Authorized
Florida	\$100,000 ^{vi}	Same	Authorized
Georgia	Insurance limits; claims must be presented to legislature	Counties have immunity unless waived	Authorized
Hawaii	No limitation	Same	Required for motor vehicles
Idaho	\$500,000 plus excess liability insurance	Same	Required \$500,000 minimum
Illinois	\$300,000	Restricted	Authorized
Indiana	\$300,000/\$5 million	Up to insurance limits	Prohibited for State, authorized for cities & counties
Iowa	No limitation	Same	Authorized
Kansas	\$500,000 plus excess insurance limit	Same	Authorized
Kentucky	\$100,000	No immunity	Authorized
Louisiana	\$500,000 plus medical care and lost earnings	No immunity	Authorized
Maine	\$300,000 plus excess insurance limit	No immunity	Required
Massachusetts	\$100,000 but may indemnify employees up to \$1 million	Same	Authorized
Michigan	No apparent limitation	Same	Authorized
Maryland	\$100,000	\$200,000	Authorized
Minnesota	Wrongful death \$1 million	Limited immunity	Authorized
Mississippi	\$500,000	Same	Authorized
Missouri	\$1 million	Same	Authorized
Montana	\$750,000	Same	Authorized
Nebraska	\$1 million	Same	Authorized
Nevada	\$50,000	Same	Authorized

New Hampshire	\$250,000	Same	Authorized
New Jersey	No limitation	Same	Authorized
New Mexico	\$100,000 property damage \$300,000 medical expenses \$500,000 other damages	Same	Required
New York	No limitation	Same	Authorized
North Carolina	\$150,000	Immunity except as insured	Authorized
North Dakota	\$250,000	Same	Authorized
Ohio	Actual damages: no limitation Other: \$250,000	Same	Authorized
Oklahoma	\$25,000 property damage \$100,000 Injury \$200,000 medical malpractice	Same	Required
Oregon	\$50,000 property damage \$100,000 injury	Same	Authorized
Pennsylvania	\$250,000	Same	Authorized
Rhode Island	\$100,000 (does not apply to proprietary functions)	Same	
South Carolina	\$300,000	Same	Required
South Dakota	\$200,000	Same	Authorized
Tennessee	\$300,000	Listed by law	Required
Texas	\$250,000 or up to insurance limit if greater	\$100,000	Authorized
Utah	\$250,000	Same	Authorized
Virginia	\$100,000 or up to insurance limit if greater	Have no immunity for proprietary functions	Required for motor vehicles and buildings
Vermont	\$250,000	Insurance limits	Authorized
Washington	No limitation	Same liability	Revolving fund created for payment
West Virginia	No limitation on compensatory damages; \$500,000 for noneconomic damages	Same	Authorized
Wisconsin	\$250,000	\$50,000	Authorized
Wyoming	\$250,000 or insurance limits, whichever is greater	Same	Authorized

ⁱ Cap is established for both lawsuits or other actions toward states for damages. The cap cited may be altered by the nature of the claim, e.g. Property damages, personal injury, and further refined by the nature of the activity in which the government was engaged.

ⁱⁱ Includes local subdivisions of government

ⁱⁱⁱ State Claims Commission may award damages.

^{iv} Immunity for discretionary acts but liable for proprietary acts.

^v After hearing Claims Commission makes recommendation to General Assembly. Claims Commission has to authorize any suit.

^{vi} Legislative act may grant larger recovery.



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Dollar Cap For Damages From States

No waiver of sovereign immunity		\$50,000	\$100,000	\$125,000	\$150,000	\$200,000
Arkansas ¹ Georgia		Nevada	Alabama Florida Kentucky Massachusetts Maryland Rhode Island Virginia	Oklahoma ³	Colorado North Carolina Oregon ⁴	Minnesota South Dakota

\$250,000	\$300,000	\$500,000	\$750,000	\$800,000	\$1,000,000	No Limitation
New Hampshire North Dakota Pennsylvania Texas Utah Vermont Wisconsin Wyoming	Delaware Illinois Indiana Maine South Carolina Tennessee	Idaho Kansas Mississippi	Montana	New Mexico ⁵	Missouri Nebraska	Alaska ⁶ Arizona California Connecticut Hawaii Iowa Louisiana ⁶ Michigan New Jersey New York Ohio ⁷ Washington West Virginia ⁶

-
- 1 State pays employees' liability for actual cost
 - 2 Individual claims paid as determined by state legislature
 - 3 Limits \$25,000 property damages, \$100,000 personal injury, \$200,000 medical malpractice
 - 4 Limits \$50,000 property damages, \$100,000 personal injury
 - 5 Limits \$100,000 property damages, \$300,000 medical expenses, \$400,000 other damages
 - 6 Limits \$500,000 noneconomic damages
 - 7 Limits \$250,000 for damages other than actual damages
-

Summary of Tort Caps

No waiver of sovereign immunity - 2 states
Caps lower than NC - 9 states
Caps same as NC - 2 states
Caps higher than NC - 36 states
No caps - 13 states

Medium cap – Between \$250,000 - \$300,000
24 states – Caps of \$250,000 or less
26 states – Caps of \$300,000 or more

FUNDING STATE TORT CLAIMS LIABILITY
(March, 2000)

I. Claims Against the State

Motor Vehicle Claims

Non-Motor Vehicle Claims

Funded through a retro pool

State agencies with motor fleet assessed a per unit (vehicle) charge to fund retro pool

Settlements or awards are paid by the responsible agency from the agency's existing budget.

Claims adjusted (administered) by the Travelers Insurance Company on a fee basis.

Settlements approved by the Attorney General's Office.

Claims are administered and defended by the Attorney General's Office.

Unsettled claims are defended by the Attorney General's Office initially before the Industrial Commission.

Claims paid from the pool.

Multiple Claims Coverage

State purchases insurance to pay the State's motor vehicle liability from multiple claims totaling in excess of \$250,000, up to \$5 million arising from the same occurrence.

Out-of-State Auto Coverage

State purchases insurance coverage to cover State liability for auto claims arising out-of-state in excess of the tort claims limit up to \$1 million per claimant or \$5 million per incident.

II. Claims Against State Employees

Motor Vehicle Claims

Non-Motor Vehicle Claims

No coverage for employees in excess of duty to defend limit.

Employee Excess Liability Coverage

State purchases insurance covering state employees' non-auto liability in certain situations in excess of the State's duty to defend limit (State tort claim cap) up to \$11 million per claim (aggregate claims limit of \$50 million per year).



DEPARTMENT OF INSURANCE

State of North Carolina

P. O. Box 26387

RALEIGH, N.C. 27611

JIM LONG
COMMISSIONER OF INSURANCE

ADMINISTRATION
(919) 733-0433

March 9, 2000

TO: Senator Brad Miller, Co-Chair
Representative Martin Nesbitt, Co-Chair

FROM: Dascheil D. Propes, Chief Deputy *DDP*

RE: State Tort Liability & Immunity

I have been asked to provide recommendations to this Committee for the funding and implementation of a higher tort limit for the State of North Carolina.

In review, you may recall that it is our best estimate that an increase in the tort limit to \$300,000 or \$500,000 will require additional funding to meet obligations in the amount of \$827,000 and \$2,208,000, respectively.

Furthermore, if one assumes that as many as four (4) additional "non-auto" claims were to come to full fruition, additional funding amounts of \$600,000 or \$1,400,000 would be required. The total of this additional funding requirement is \$1,427,000 and \$3,608,000, respectively.

Corresponding payments resulting from these increased limits could be accomplished in the following manner:

- Establish two new and separate funds similar to the N.C. Auto Retrospective Adjustment Fund (Budget Code 63900, Center 6110) that exists today within the Department of Insurance. One fund would be designated "auto," and one fund would be designated "non-auto."
- Fund these accounts at the levels mentioned above.
- Pay any claim amounts in excess of current tort liability limits (\$150,000) from these accounts established for this purpose.



Senator Miller & Representative Nesbitt
March 9, 2000
Page Two

- Review the fund balances each biennium for any needed adjustments.

In addition to budgeting simplicity we also note that this procedure gives this Committee greater flexibility over the effective date of implementation of any increase in tort limit. For example, any retroactive implementation could be achieved using this method.

DDP/jmg

APPENDIX H

To: Study Committee on State Tort Liability and Immunity
From: Elisa Wolper, Fiscal Research Division
Re: Estimate of Cost of Raising Tort Claim Limit
Date: March 28, 2000

At the last meeting of the State Tort Liability Study Committee, I was asked to estimate the cost to the State of raising the limit on Tort Claims from \$150,000 to \$500,000. Based on the committee's discussions, I am assuming the increase would be implemented by establishing a fund at the state level rather than by expecting individual agencies to absorb increased claims from available funds.

First of all, I want to emphasize that it is very difficult to project Tort Claims expenses since nobody can predict what accidents will occur in the future. Using averages over several years can be misleading. For instance, looking at the losses incurred for automobile liability, from 1993-98 the amount of excess losses over \$250,000 averaged \$271,294 per year. However, one of those years the loss was \$1.18 Million and the other years it was under \$120,000.

Secondly, because our current limit is \$150,000, there is virtually no information as to how much above \$150,000 a certain claim is worth. Many claims are filed at \$150,000 or higher, even if they are unlikely to result in large awards. Many claimants that have potentially large awards file a claim at \$150,000 because they know that is the limit.

Given these limitations, I have projected the cost of the ceiling increase using 3 different methodologies. **Looking at the average across those methods, the estimated cost is \$2.64 Million per year.**

I. The first method estimates the frequency and size of future claims.

- While unpredictable, the frequency of claims at the current ceiling is relatively low. The Industrial Commission reports 4 such *closed cases* in 1996-7, 6 in 1997-8 and 5 in 1998-9 or an average of 5 per year. Since not 100% of cases go through the Industrial Commission, the Department of Justice—Tort Claims Section believes the total may be closer to 10 per year. The Department of Insurance estimates they settle 2-3 cases a year at the \$150,000 ceiling. The Department of Justice's annual report on settlements against the state listed 5 Tort Claims paid at \$150,000. The Department of Transportation (nonauto) has averaged 1 claim paid over \$100,000 per year. Based on that information, I assume the number of cases will range from 4-12 with a midpoint of 8.

- It is impossible to project whether these claims that were paid at \$150,000 would receive \$500,000 under the higher ceiling. It is reasonable to assume there will be some cases that would receive \$500,000 but there is certainly no evidence they would all go that high.
- For illustration purposes, assume that among the 8 cases 2 would still receive \$150,000, 2 would receive \$250,000, 2 would receive \$350,000 and 2 would receive \$500,000. **That would increase state liability by \$1.3 Million. The highest estimate would be \$4.2 Million (12 cases all at \$500,000). A lower estimate would be \$700,000 (4 cases, 2 remain at \$150,000 and 2 go to \$500,000).**

II. An alternative method is to assume that the average claim will go up as the ceiling is raised. This occurs because the higher claims pull up the average but also because with a higher ceiling, claimants may ask for and the Industrial Commission/Court/Mediation may grant higher amounts.

- Travelers Insurance estimated increasing the ceiling from \$150,000 to \$300,000 would increase average claims for auto liability by 16%. Applying this percentage to the 3 major General Fund categories of Tort Claims for 1998-9:

Losses under Auto Liability:	\$2,654,740
School Bus Accidents:	\$3,219,301
Other Agencies Torts:	\$ 862,750
 TOTAL	 \$6,736,781

- **A 16% increase (\$300,00 ceiling) would total \$1.078 Million. Assuming the percentage increase would be at least twice as high for going to \$500,000, that brings the estimate to \$2.16 Million**
- There is additional liability for the Highway Fund (nonauto) which averaged \$744,818 per year over the past two years. A 16% increase would cost \$119,170 and a 32% would cost \$238,342

III. A third method relies on the actuarial estimates of Travelers Insurance in administering the Retrospective Rating Plan for Auto Liability.

- They estimate an increase in losses of \$827,000 with a ceiling of \$300,000 or \$2,208,000 for going to \$500,000. Losses under Auto Liability represented about 40% of total cost of Tort Claims in 1998-9. If the impact would be analogous in other areas, the estimated cost would be \$2.07 Million for \$300,000 or \$5.5 Million for a \$500,000 cap. The actuarial estimates are probably conservative estimate (e.g. on the high side) and the impact on non-auto/school bus torts is unlikely to be as high, due to the lower frequency of incidents.
- Considering the Highway Fund nonauto claims would increase this estimate by about \$228,000 / \$607,000.

Using these 3 methods yields estimates for a \$500,00 ceiling ranging from \$700,000 to \$5.5 Million.

	<u>LOW</u>	<u>HIGH</u>
METHOD #1 PROJECT #/\$ CLAIMS	\$700,000	\$4,200,00
METHOD #2 PROJECT 16%/32% INC AVG CLAIM	\$1,078,000	\$2,160,000
METHOD #3 TRAVELERS ESTIMATE ONLY	\$2,208,000	\$5,500,000
AVERAGE OF METHODS	\$1,328,666	\$3,953,333

The estimates for additional liability due to Highway Fund nonauto range from \$119,170 to \$607,000.

While Method #1 is consistent with having agencies pay the first \$150,000 and a statewide fund cover claims beyond that point, the other methods assume an increase cost of smaller claims as well. Some of the increased cost would fall on the agencies, especially the Department of Public Instruction.

For the purposes of arriving at a single number, averaging the low and high estimates across all 3 methods yields an estimate of approximately \$2.64 Million. If this amount were placed in a statewide fund, it would be sufficient to cover 7.5 claims per year at \$350,000 additional per claim.

PENDING/EXPECTED CLAIMS

I was unable to estimate the impact of applying the increased ceiling to claims not yet filed or pending. Neither the Department of Insurance, the Industrial Commission nor the Department of Justice was comfortable using data on pending claim amounts, since many weak claims are filed at the current ceiling. Last year, the Department of Insurance reported they had 12 claims pending of at least \$100,000, some of them going back as far as 5 years. That suggests allowing claims for incidents prior to 2000 could have a significant impact on total liability, but that those extra cases may be spread out over several years.

There is only anecdotal information on claims expected but not yet filed. Because there is a 3-year statute of limitations (3 years after becoming an adult for a minor) there is clearly an increased liability of raising the ceiling retroactively, but no information on which to base an estimate.

This estimate does not address potential impact on the workload of the Department of Justice Tort Claims Section or any costs of administering payment of tort claims from a statewide fund.

**ESTIMATE OF IMPACT OF RAISING TORT CLAIMS
LIMIT TO \$500,000**

**I. PROJECT NUMBER OF CASES THAT WILL BE PAID/SETTLED ABOVE CURRENT
CEILING/LIKELY SIZE OF PAYMENTS**

Average Number of cases closed at \$150,000 before
Industrial Commission (3 years) 5

Estimated Number of auto cases settled at
\$150,000 per year 2.5

Recognizing not all cases go through IC
ESTIMATED ANNUAL CASES 8 (4-12)

- Middle Estimate: 8 cases ranging \$150-\$500,000 \$1,300,000
- Low Estimate: 4 cases, 2 at new ceiling \$ 700,000
- High Estimate: 12 cases, all at new ceiling \$4,200,000

**II. ASSUME 16-32% INCREASE IN AVERAGE CLAIMS FOR ALL TORT CLAIMS
(\$6,736,781)**

- Low Estimate (16%) \$1,078,000
- High Estimate (32%) \$2,160,000

Additional Highway Fund (nonauto) ranging \$119,170--\$238,342

**III. USE ACTUARIAL ESTIMATES FROM TRAVELERS FOR INCREASING CEILING—
APPLY SAME FACTOR TO NONAUTO CASES**

- Low Estimate (auto only) \$2,208,000
- High Estimate (all Torts) \$5,500,000

Additional Highway Fund (nonauto) ranging \$228,000--\$607,000

Average Across All Methods 2,640,000

APPENDIX I

STATE TORT CLAIM LIABILITY

Committee:	State Tort Liability and Immunity Committee (LRC)
Date:	March 28, 2000
Topic:	Summary of Bill to Amend State Tort Claim Laws
Prepared By:	Wendy Graf, Committee Co-counsel

SUMMARY: *This bill would increase the State Tort Claim limit and State liability under the duty to defend State employees from a maximum of \$150,000 to a maximum of \$500,000. It also provides for the funding of claims in excess of \$150,000 through the State Excess Liability Fund.*

CHANGES :

- Section 1. G. S. 143-291(a) – Removes the current tort cap of \$150,000 and establishes the cap instead by reference to limitation authorized in G. S. 143-299.2. This change will eliminate the need to change this statute when the cap is raised in the future.
- Section 2. G. S. 143-291 – Adds a new subsection (a1) stating that claims in excess of \$150,000 shall be paid from the newly created State Excess Liability Fund, while those up to \$150,000 will continue to be paid for by the unit of State government by which the employee was employed.
- Section 3. G. S. 143-291.3 – Increases the maximum dollar amount of \$150,000 for counterclaims in tort claim actions to the same amount authorized for a claim in G. S. 143-299.2.
- Section 4. G. S. 143-299.2 – Increases the maximum dollar amount of \$150,000 for a claim brought under Articles 31 State Tort Claim, 31A Duty to Defend State Employees, or 31B Defense of Public School Employees, to a maximum of \$500,000.
- Section 5. G. S. 143-299.4 – Creates the State Excess Liability Fund to pay claims in excess of \$150,000. The State Excess Liability Fund is non-reverting, with earnings credited to the assets of the fund becoming part of the fund.
- Section 6. G. S. 143-300.1 – Amends provision regarding claims for accidents involving school buses or school transportation service vehicles to make it conform with the new claim limit of \$500,000 and payments from the new State Excess Liability Fund.
- Section 7. G. S. 143-300.6 – Amends provision regarding payment of judgments and settlements under Chapter 31A Duty to Defend State Employees, to make it conform with the new claim limit of \$500,000 and the new State Excess Liability Fund.

- Section 8. G. S. 143-300.16 – Amends provision regarding payment of judgments and settlements under Chapter 31B Defense of Public School Employees, to make it conform with the new claim limit of \$500,000 and the new State Excess Liability Fund.
- Section 9. – Appropriates \$2.64 million from the General Fund to the State Excess Liability Fund for fiscal year 2001.
- Section 10 – The act would be effective July 1, 2000, sections 1, 2, 4, 5, 6, 7, and 8 applying to claims pending on or after that date, and Section 3 applying to claims filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

99-DSU-210

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

14-APR-00 10:57:10

Short Title: Amend State Tort Claims Law.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT AND STATE LIABILITY
3 UNDER THE DUTY TO DEFEND STATE EMPLOYEES LIABILITY AND TO
4 PROVIDE FOR THE FUNDING OF STATE TORT LIABILITY CLAIMS IN
5 EXCESS OF \$150,000.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 143-291(a) reads as rewritten:
8 "(a) The North Carolina Industrial Commission is hereby
9 constituted a court for the purpose of hearing and passing upon
10 tort claims against the State Board of Education, the Board of
11 Transportation, and all other departments, institutions and
12 agencies of the State. The Industrial Commission shall determine
13 whether or not each individual claim arose as a result of the
14 negligence of any officer, employee, involuntary servant or agent
15 of the State while acting within the scope of his office,
16 employment, service, agency or authority, under circumstances
17 where the State of North Carolina, if a private person, would be
18 liable to the claimant in accordance with the laws of North

1 Carolina. If the Commission finds that there was ~~such~~ negligence
2 on the part of an officer, employee, involuntary servant or agent
3 of the State while acting within the scope of his office,
4 employment, service, agency or authority, ~~which~~ that was the
5 proximate cause of the injury and that there was no contributory
6 negligence on the part of the claimant or the person in whose
7 behalf the claim is asserted, the Commission shall determine the
8 amount of damages ~~which~~ that the claimant is entitled to be paid,
9 including medical and other expenses, and by appropriate order
10 direct the payment of such damages ~~by the department, institution~~
11 ~~or agency concerned,~~ as set forth in subsection (a) of this
12 section, but in no event shall the amount of damages awarded
13 ~~exceed the sum of one hundred fifty thousand dollars (\$150,000)~~
14 the amounts authorized in G.S. 143-299.2 cumulatively to all
15 claimants on account of injury and damage to any one ~~person-~~
16 person arising out of a single occurrence. Community colleges
17 and technical colleges shall be deemed State agencies for
18 purposes of this Article. The fact that a claim may be brought
19 under more than one Article under this Chapter shall not increase
20 the foregoing maximum liability of the State."

21 Section 2. G.S. 143-291 is amended by adding a new
22 subsection to read:

23 "(a) The unit of State government by which the employee was
24 employed at the time the cause of action arose shall make the
25 payment of the first one hundred fifty thousand dollars
26 (\$150,000) of liability, and the balance of any payment owed
27 shall be paid from the State Excess Liability Fund in accordance
28 with G.S. 143-299.4."

29 Section 3. G.S. 143-291.3 reads as rewritten:

30 "§ 143-291.3. Counterclaims by State.

31 The filing of a claim under this Article shall constitute
32 consent by the plaintiff(s) to the jurisdiction of the Industrial
33 Commission to hear and determine any counterclaim of ~~one hundred~~
34 ~~fifty thousand dollars (\$150,000)~~ the maximum amount authorized
35 for a claim in G.S. 143-299.2 or less ~~which~~ that may be filed on
36 behalf of a State department, ~~institution, or agency~~ institution
37 or agency, or a county or city board of education. A final award
38 of the Industrial Commission awarding damages on a counterclaim
39 shall be filed with the Clerk of the Superior Court of the county
40 wherein the case was heard. These awards shall be docketed and
41 shall be enforceable in the same manner as judgments of the
42 General Court of Justice. Notwithstanding the provisions of Rule
43 12 of the Rules of Civil Procedure, nothing in this section shall
44 require the filing of ~~such~~ a counterclaim."

1 Section 4. G.S. 143-299.2 reads as rewritten:

2 "§ 143-299.2. Limitation on payments by the State.

3 (a) The maximum amount which the State may pay cumulatively to
4 all claimants on account of injury and damage to any one person,
5 person arising out of any one occurrence, whether the claim or
6 claims are brought under this Article Article, or Article 31A or
7 Article 31B, shall be one hundred fifty thousand dollars
8 (\$150,000), Article 31B of this Chapter, less any commercial
9 liability insurance purchased by the State and applicable to the
10 claim or claims under G.S. 143-291(b), 143-300.6(c), or
11 143-300.16(c). 143-300.16(c), shall be five hundred thousand
12 dollars (\$500,000) in total damages.

13 (b) The fact that a claim or claims may be brought under more
14 than one Article under this Chapter shall not increase the above
15 maximum liability of the State.

16 Section 5. Article 31 of Chapter 143 of the General
17 Statutes is amended by adding a new section to read:

18 "§ 143-299.4. State Excess Liability Fund.

19 (a) Fund Established. -- There is established the State Excess
20 Liability Fund as a nonreverting restricted reserve fund in the
21 Office of State Budget and Management.

22 (b) Fund Earnings, Assets, and Balances. -- The State
23 Treasurer shall hold the Fund separate and apart from all other
24 moneys, funds, and accounts. Investment earnings credited to the
25 assets of the Fund shall become part of the Fund. Any balance
26 remaining in the Fund at the end of any fiscal year shall not
27 revert but shall be carried forward in the Fund for the next
28 succeeding fiscal year. Payments from the Fund shall be made on
29 the warrant of the Attorney General.

30 (c) Fund Purposes. -- Moneys from the Fund may be used only
31 for the purpose of paying the balance of claims in excess of one
32 hundred fifty thousand dollars (\$150,000) per claim arising under
33 this Article, or Article 31A or 31B of this Chapter, on account
34 of injury or damage to any one person.

35 (d) Definition. -- For purposes of this section, the term
36 'Fund' means the State Excess Liability Fund."

37 Section 6. G.S. 143-300.1(c) reads as rewritten:

38 "(c) In the event that the Industrial Commission shall make
39 award of damages against any county or city board of education
40 pursuant to this section, the Attorney General shall draw a
41 voucher for the amount required to pay such award. The funds
42 necessary to cover the first one hundred fifty thousand dollars
43 (\$150,000) of liability per claim vouchers written by the
44 Attorney General for claims against county and city boards of

1 education for accidents involving school buses and school
2 transportation service vehicles shall be made available from
3 funds appropriated to the Department of Public Instruction. The
4 balance of any liability owed shall be paid from the State Excess
5 Liability Fund in accordance with G.S. 143-299.4. Neither the
6 county or city boards of education, or the county or city
7 administrative unit shall be liable for the payment of any award
8 made pursuant to the provisions of this section in excess of the
9 amount paid upon ~~such~~ a voucher by the Attorney General.
10 Settlement and payment may be made by the Attorney General as
11 provided in G.S. 143-295."

12 Section 7. G.S. 143-300.6(a) reads as rewritten:

13 "(a) Payment of Judgments and Settlements. In an action to
14 which this Article applies, the State shall pay (i) a final
15 judgment awarded in a court of competent jurisdiction against a
16 State employee or (ii) the amount due under a settlement of the
17 action under this section. The unit of State government by which
18 the employee was employed shall make the ~~payment.~~ payment of the
19 first one hundred fifty thousand dollars (\$150,000) of liability,
20 and the balance of any payment owed shall be paid from the State
21 Excess Liability Fund in accordance with G.S. 143-299.4. This
22 section does not waive the sovereign immunity of the State with
23 respect to any claim. A payment of a judgment or settlement of a
24 claim against a State employee or several State employees as
25 joint tort-feasors may not exceed the amount payable for one
26 claim under the Tort Claims Act."

27 Section 8. G.S. 143-300.16(a) reads as rewritten:

28 "(a) Any final judgment awarded against an employee in an
29 action which meets the requirements of G.S. 143-300.14, or any
30 amount payable under a settlement of such an action, shall be
31 paid by the State. The first one hundred fifty thousand dollars
32 (\$150,000) of liability shall be paid from funds appropriated to
33 the Department of Public Instruction for the payment of State
34 Tort Claims. The balance of any payment owed shall be paid from
35 the State Excess Liability Fund in accordance with G.S. 143-
36 299.4. from the appropriation for the payment of State Tort
37 Claims, except that no No payment shall be made from ~~that~~
38 ~~appropriation~~ either funds appropriated to the Department of
39 Public Instruction or the State Excess Liability Fund for any
40 judgment for punitive damages. Nothing in this section shall be
41 deemed to waive the sovereign immunity of the State with respect
42 to a claim covered under this section or authorize the payment of
43 any judgment or settlement against a public school employee in
44 excess of the limit provided in the Tort Claims Act."

1 Section 9. There is appropriated from the General Fund
2 to the State Excess Liability Fund the sum of two million six
3 hundred forty thousand dollars (\$2,640,000) for fiscal year 2000-
4 2001.

5 Section 10. This act becomes effective July 1, 2000.
6 Sections 1, 2, 4, 5, 6, 7, and 8 apply to claims or actions
7 pending on after the effective date. Section 3 applies to claims
8 filed on or after the effective date.

9